

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

JOSEPH F. HUTCHINSON, et al.,

Plaintiffs,

VS.

FIFTH THIRD BANCORP,

Defendant.

CASE NO.

C-1-01-789

VOLUME I

Deposition of: PAUL L. REYNOLDS, ESQ.

Pursuant to: Notice

Date and Time: Monday, June 6, 2005
2:26 p.m.

Place: Keating, Muething & Klekamp,
PLL

1400 Provident Tower
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I N D E X

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EXHIBITS	MARKED	REFERENCED
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1 PAUL L. REYNOLDS, ESQ.

2 a witness herein, having been duly sworn, was examined
3 and deposed as follows:

4 EXAMINATION

5 BY MR. MEYER:

6 Q. Would you state your full name, please?

7 A. Paul Lyle Reynolds.

8 Q. Who is your employer?

9 A. Fifth Third Bank.

10 Q. For how long have you been employed by Fifth
11 Third?

12 A. Approximately 15 years.

13 Q. And where did you go to law school?

14 A. University of Kentucky.

15 Q. And you obtained your law degree in what
16 year?

17 A. 1986.

18 Q. What is your job title at Fifth Third?

19 A. Executive vice president and general counsel.

20 Q. How long have you been an executive VP?

21 A. Approximately seven years.

22 Q. And what about general counsel?

23 A. Of the holding company, seven years; of the
24 bank, subsidiary bank, six years, before that.

25 Q. So altogether 13 years; is that what you're

1 indicating?

2 A. No.

3 MR. FISCHER: For the bank?

4 THE WITNESS: Right. Two different
5 organizations.

6 MR. MEYER: Right. I understand.

7 BY MR. MEYER:

8 Q. What did you do for Fifth Third in those
9 first two years?

10 A. I managed the legal department.

11 Q. Currently, how many people are in the legal
12 department?

13 A. Just the legal department, or the other
14 departments I manage as well?

15 Q. Well, let's go back to the time frame
16 relevant to this case.

17 A. Okay.

18 Q. Let's take '97 to 2000, somewhere in that
19 era. What were you doing back then?

20 MR. FISCHER: Objection to form.

21 A. Do you want -- it changed from 1997 through
22 2000, constantly. Do you want -- I mean, what's the
23 question?

24 BY MR. MEYER:

25 Q. Okay. Let's take the year 1997. I'll ask

1 you, what was your involvement, if any, in the merger
2 and negotiations between Fifth Third and Suburban
3 Federal?

4 A. I was general counsel, and I negotiated the
5 acquisition agreement and the -- most of the issues
6 surrounding the acquisition.

7 Q. When you say most of the issues, did that
8 include issues related to the Suburban ESOP?

9 A. Yes.

10 Q. Who all was involved in the merger
11 negotiations on the Fifth Third side of it?

12 A. It would have been me; a guy named Bob
13 Ernst.

14 Q. What was his role?

15 A. Bob was the head of the merger and
16 acquisition integration group. Probably wasn't a
17 group. He was just the individual that did that.

18 Q. Would he have had anything to do with the --
19 how the ESOP fit into the merger negotiations?

20 A. He may have been involved in the discussion,
21 but I don't think he would have probably been a
22 decision-maker at that time.

23 Q. Okay. Who else besides Bob Ernst?

24 A. From the financial side, various people:
25 Mike Brumm, Roger Dean, possibly Dave DeBrunner. I

1 can't be honest about what -- honestly remember what
2 time frame Dave was ever involved. But I -- I -- it
3 wouldn't have been in terms of discussing anything with
4 the Suburban folks. He probably would have just been
5 involved behind the scenes.

6 Other than, let's see, outside counsel, it
7 would have been Steve Goodson. We had securities
8 counsel. It would have been Dick Schmazl at Graydon,
9 Head & Ritchey. Those are all the specific people I
10 can remember right now for them.

11 Q. Was anybody else in your legal department
12 involved?

13 A. Not -- not in terms of negotiating the
14 acquisition and the affiliation agreement; preparation
15 of the securities filing, probably.

16 Q. Who would have been most involved in dealing
17 with the details of the Suburban ESOP?

18 A. In the legal department?

19 Q. Yes.

20 A. Me.

21 Q. Did you coordinate your efforts in that
22 regard with Mr. Goodson?

23 A. Yes.

24 Q. Was there an actual negotiation of the
25 details of that ESOP?

1 A. Yes.

2 Q. Okay. Who was the final decision-maker with
3 regard to anything related to the ESOP on behalf of
4 Fifth Third?

5 A. It would have been me.

6 Q. Who was representing Suburban Federal, as far
7 as you know?

8 A. Housley Kantarian, I think were the first two
9 names of the firm. The primary person I dealt with was
10 a guy named Len Volin.

11 Q. Did you deal with a Dan Hogans?

12 A. I remember the name, yeah. I'm sure I talked
13 to him.

14 Q. Okay. Was Housley Kantarian your
15 counterpart, but on behalf of Suburban?

16 A. Yes.

17 Q. Was there anybody personally from Suburban
18 involved, other than legal counsel?

19 A. Not with me. I don't remember talking on
20 that deal to anybody at Suburban during the
21 negotiations.

22 Q. In respect to the Suburban ESOP, who would
23 you have dealt with at Housley?

24 A. I had a lot of conversations with Len at the
25 time. It seems like I was always talking to Len, as I

1 remember. He may have had other people in the room,
2 but I can't tell you right now who they were.

3 Q. Okay. Where would your files be located
4 today from -- from your involvement in that merger?

5 A. In my office. Well, in the legal department.
6 I think they're probably all still there.

7 Q. Have you reviewed any documents in
8 preparation for today's deposition?

9 A. Yes.

10 Q. What documents did you review?

11 A. Mostly the affiliation agreement, some of the
12 correspondence back and forth during the negotiation of
13 the affiliation agreement, some of the SEC filings,
14 maybe some of the tax filings, I guess. That's about
15 it.

16 Q. Are you conversant with ESOP accounting
17 methodologies?

18 A. Not really. I know some of the basics.

19 Q. The basics that you do know, how did you
20 acquire that knowledge?

21 A. Mostly from negotiating transactions and
22 learning from outside counsel how they work.

23 Q. From your experience in the merger area and
24 dealing with ESOPs, was there anything unusual about
25 the Suburban Federal ESOP that you recall?

1 MR. FISCHER: Objection to form.

2 A. The nature of the discussions were the same
3 as most transactions.

4 BY MR. MEYER:

5 Q. As best you recall, what were the nature of
6 the discussions with the Suburban ESOP?

7 A. Most of the discussions revolved around
8 contributions to the ESOP, what the company could and
9 couldn't do with the plans during the period between
10 signing the agreement and closing, how the plans were
11 to be treated, how they rolled into the calculation
12 into the change of control agreements for the key
13 executives.

14 Q. Do you recall what conclusion was reached
15 with regard to contributions in this case from the time
16 that the merger agreement was signed until the
17 closing?

18 A. Yes.

19 Q. What do you recall?

20 A. Well, I recall that -- that we allowed them
21 to make contributions for that year to the -- to the
22 ESOP plan.

23 Q. What was the effect of allowing them to make
24 contributions?

25 MR. FISCHER: Objection.

1 A. I'm not sure I understand the question.

2 BY MR. MEYER:

3 Q. Well, this is in the context of, things will
4 be discussed in terms of the merger?

5 A. Uh-huh.

6 Q. And you said that one of the things you
7 recall is the --

8 A. Right.

9 Q. -- the issue of contributions by Suburban, I
10 take it?

11 A. Right, right.

12 Q. And that contributions would be the year --
13 the plan year of the merger, correct?

14 A. Uh-huh, right.

15 Q. You know, let's just assume that the
16 affiliation agreement was signed in March and it closed
17 in July and the plan year ended on June 30, 1997. Is
18 that the -- just assume that.

19 A. Okay.

20 Q. You would be talking about contributions by
21 Suburban up to June 30, 1997 -- or up until the time of
22 the merger in July?

23 A. Correct, up until the closing date.

24 Q. So that could be the next plan year,
25 beginning July 1, 1997?

1 A. Sure.

2 Q. What considerations does -- would Fifth Third
3 have had in choosing whether or not to allow those
4 contributions to be made? What's the perspective from
5 Fifth Third's point of view?

6 MR. FISCHER: Objection to form.

7 A. The biggest question is, the fact that they
8 have to spend the money, take the money out of earnings
9 to put it into the plans.

10 That's -- that's always the first
11 consideration, because there are -- you know, when
12 you're heading into an acquisition and you know that
13 their employees are going to be coming over to our
14 plans, the question begs, why do you want to spend the
15 money to put money in the existing plans as you go
16 forward. That's really the first consideration.

17 The second is that there are a lot of changes
18 and things that happen after an acquisition that can be
19 impacted by what you do to a plan before the
20 acquisition.

21 So there was a lot of discussion about what
22 the contributions would do in terms of qualifications
23 of the plan, being able to close the plan, those kinds
24 of things.

25 BY MR. MEYER:

1 Q. Let me see if I understand the first
2 consideration.

3 As I would understand it, if, in this case,
4 Suburban is permitted to make a contribution out of its
5 assets to the plan --

6 A. Uh-huh.

7 Q. -- that would reduce the amount of assets
8 being transferred over to Fifth Third as part of the
9 merger?

10 A. Well, it depends on whether it's assets,
11 whether it's been expensed, whether it's something that
12 comes out of current earnings, those kinds of things.

13 Q. Okay. Let me ask you to look at a document
14 here. And we'll try to see exactly what that
15 difference is between assets and expenses.

16 A. Uh-huh.

17 Q. This is Exhibit 22. If you'll take a minute
18 just to review that. And the first question would be
19 if you recollect what that is.

20 A. What the document is?

21 Q. Yes.

22 A. Yes.

23 Q. You do recall that document?

24 A. Yes, yes.

25 Q. That's something you reviewed recently?

1 A. Yes, relatively. Yes.

2 Q. How recently would you say you looked at
3 that?

4 A. In the last week or so. Okay.

5 Q. If you will look at the paragraph denominated
6 1A, there is a reference in that paragraph to principal
7 and interest due under the ESOP plan. What is your
8 understanding of what that loan is?

9 A. It was -- it's a loan to the plan itself, to
10 allow it to buy the stock initially.

11 Q. And from this paragraph 1A, it appears that
12 contributions will be made or have been made totaling
13 \$200,451, is that correct, in principal and interest to
14 be assessed against that loan?

15 MR. FISCHER: Objection. I don't think
16 that's what that says.

17 A. It's not what it says.

18 BY MR. MEYER:

19 Q. Okay. Tell me in what respect I'm wrong.

20 A. You said the contribution was \$200,000.
21 That's not -- it says the -- the 200,000 is the
22 principal and interest that's due under the loan. It
23 doesn't say that's what it was -- that's what was
24 necessarily contributed.

25 Q. So any amount due under the loan is \$200,451

1 in principal and interest, correct?

2 A. Right, correct.

3 Q. And of that amount, there will be remaining
4 unpaid \$24,816 once the contributions are made totaling
5 approximately \$175,000. Is that basically what 1A
6 states?

7 MR. FISCHER: Objection.

8 A. Yes.

9 BY MR. MEYER:

10 Q. Now, in reference to your comment that Fifth
11 Third allowed certain contributions to be made, 1A
12 refers to -- apparently refers to two contributions,
13 one in the amount of \$133,630.

14 Do you know if that contribution was approved
15 by Fifth Third or allowed by Fifth Third, or had that
16 already been made before the merger?

17 A. I don't know.

18 Q. Based on the reading of 1A, you can't tell
19 one way or the other; is that correct?

20 A. That's correct.

21 Q. And what about the \$42,000? Is that an
22 amount that was allowed by Fifth Third to be made?

23 A. Yes.

24 Q. And then paragraph 1B says, The remaining
25 \$24,816. We've previously established that was the

1 balance in interest and principal of the loan?

2 MR. FISCHER: Objection.

3 A. You said interest and principal, right?

4 MR. MEYER: I'm sorry. That's my mistake.

5 BY MR. MEYER:

6 Q. Leaving interest due of \$24,816. Is that
7 your understanding of 1B?

8 A. Yes.

9 Q. And how was that to be satisfied?

10 A. According to this, by surrendering ESOP
11 shares.

12 Q. And what is -- what is that mechanism?

13 MR. FISCHER: Object to the form.

14 THE WITNESS: Please?

15 MR. FISCHER: Objection.

16 A. Taking shares over the current plan that
17 weren't allocated to individuals and using those,
18 surrendering those, taking the cash and paying down the
19 loan.

20 BY MR. MEYER:

21 Q. Do you know if, in this case, it would be
22 treasury stock, or what happened to that stock?

23 A. I don't know.

24 Q. What is that -- what is the effect of that on
25 the potential interest of participants in the plan?

1 Does that reduce their potential value of their
2 accounts?

3 A. No.

4 Q. If you look at 1C, and tell us what 1C means
5 in lay terms.

6 A. Those are the shares that would have been
7 held as collateral for the loan, to the extent that
8 payments were made from outside sources, those shares
9 would then be released and be available for
10 distribution to participants.

11 Q. Okay. Do you know whether that includes the
12 shares being surrendered under 1B?

13 A. I don't.

14 Q. You can't tell from this document?

15 A. I don't know. Not from this document, no.

16 Q. Okay. If it refers only to the contributions
17 in 1A, then as a result of the approximate \$175,000 in
18 contributions, then 12,167 shares are being allocated
19 to various accounts? Is that what that says in 1C?

20 A. It says, for allocation. I assume that
21 they're being allocated, yes.

22 Q. Okay. Now, does that affect Fifth Third's
23 interest in this merger, if that allocation of those
24 shares is made?

25 A. I'm not sure I understand the, does it affect

1 our interest in the merger.

2 Q. You said -- as I understand it, you did say
3 that Fifth Third allows certain contributions to be
4 made, which, in turn, leads to allocation of shares.
5 The contributions would affect Fifth Third's interest.
6 That's why Fifth Third has a -- would allow a --
7 contributions to be made.

8 MR. FISCHER: Objection.

9 A. There were two things I said. One was that
10 the contribution from outside the plan into the plan,
11 the dollars that are used, may affect the earnings of
12 Suburban during that period.

13 And that -- there's a lot of accounting
14 issues that play on whether or not they accrued the
15 money to put into the plan or not, to say whether
16 that's going to impact earnings.

17 The second, then, is, once you put it in
18 there, what impact is that going to have on the plan.

19 Is that what you're asking?

20 BY MR. MEYER:

21 Q. Yeah, that's what I'm asking.

22 A. Okay.

23 Q. You know, what is Fifth Third's interest in
24 how this would impact the plan?

25 A. Well, certainly, the contributions

1 themselves -- you know, we want to make sure that any
2 contributions to the plan aren't going to create any
3 kind of IRS or ERISA issue for the contributions.

4 Q. Okay. Did you personally -- if you recall,
5 did you personally review this document Exhibit 22 at
6 the time?

7 A. At the time, yes.

8 Q. Once you reviewed this document, did you have
9 any lingering concerns that you would have any tax
10 problems?

11 A. No.

12 Q. Let me be more specific. Did you have any
13 concerns with paragraphs 1A through 1E -- if those
14 contributions were made and the shares allocated, did
15 you have any concern that there would be any problems
16 with the Internal Revenue Code?

17 A. I didn't at the time.

18 Q. In retrospect, was there any problem with the
19 allocation that was made that's described in paragraph
20 1E?

21 A. I don't know.

22 Q. Now, let's see if we have a common
23 understanding of what 1E states. As I read paragraph
24 1E, there is going to be a balance of 58 -- 57,286
25 shares after various shares are allocated and

1 released from collateral. Is that your understanding
2 of 1E?

3 A. Can you say that again? I'm sorry.

4 Q. It appears that 1E is telling that there's
5 going to be a balance of 57,286 shares as of the end of
6 the plan year ending June 30, 1997 following the
7 allocation of shares released from collateral. Is
8 that --

9 A. That's what it says, yes.

10 Q. Did you have any concern -- or do you have
11 any concern, in retrospect, that there was any Internal
12 Revenue Code problems with the allocations that had
13 been made of shares up to that date, meaning June 30,
14 1997, or were those allocations consistent with the
15 Internal Revenue Code?

16 A. To my recollection, they were consistent. I
17 didn't -- I don't remember having any concerns at the
18 time.

19 Q. Now, in retrospect, did a problem develop
20 with the remaining shares, the 57,286, on a
21 going-forward basis after June 30, 1997?

22 A. There was an issue with the plan. I'm not
23 sure whether it was because of the remaining shares or
24 not. I'm not sure I understand all the intricacies of
25 the accounting, to be able to answer that question.

1 Q. Okay. What is your understanding of the
2 problem that developed?

3 A. The problem that developed was that, if you
4 read in Section D, the discharge and the possible
5 termination of the plan were limited by Code Section
6 415 requirements.

7 Q. Let's look at 1D. The first part of that, to
8 my understanding, states that the -- the loan that we
9 talked about before is to be discharged as of June 30,
10 1997 to the extent possible under Code Section 415.

11 Is that part correct? Is that your
12 understanding?

13 A. Yes.

14 Q. Okay. And do you know whether that happened
15 or not as a result of those contributions that we had
16 previously talked about in paragraphs 1A and B?

17 A. I don't know.

18 Q. One result of the loan being discharged,
19 according to 1D, is that 4,805 shares will be
20 transferred to the company, as the lender, to the ESOP.
21 Do you have an understanding of what that means?

22 A. Yes.

23 Q. What does that mean?

24 A. That means that the 4,805 shares would be
25 used to pay off -- to pay off the loan that the company

1 made to the ESOP.

2 Q. And it goes on to say, that 9,605 shares
3 being released from collateral thereby. What does that
4 mean to you?

5 A. That means that the -- the remaining -- that
6 those shares -- that the 4,805 shares were basically
7 enough to repay enough of the loan that was
8 collateralized by, not only those shares, but also an
9 additional 9,605 shares.

10 Q. Do you know if the release of those shares
11 caused any problem with Section 415 as of June 30,
12 1997?

13 A. I don't.

14 Q. Now, that brings us to 1E again. And it
15 appears that, after June 30, 1997, there is still going
16 to be 57,286 shares in the plan; is that your
17 understanding?

18 A. I think so, yes.

19 Q. Do you know if those are allocated or
20 unallocated or both?

21 A. I have no idea.

22 Q. You can't tell from this timetable?

23 A. No.

24 Q. Now, did you say there was a Section 415
25 problem that did develop?

1 A. Yes.

2 Q. And just so we're both on the same page here,
3 it developed after June 30, 1997?

4 A. I believe. I can't verify what the date was.

5 Q. Okay. Again, assuming if the merger
6 documents were signed in March and closed in July,
7 would you say that the plan was in conformity with
8 Section 415 as of June 30, 1997?

9 A. I don't know.

10 Q. Would that be one of your responsibilities,
11 to make that determination?

12 A. At some point I would have been involved in
13 it, yes.

14 Q. Okay.

15 A. I wouldn't have made the calculation.
16 Somebody would have brought it to me.

17 Q. And do you recall anybody making a
18 calculation that alerted you to the fact, as of
19 June 30, 1997, there was a Section 415 problem with
20 the Suburban ESOP?

21 A. Not specifically as of that date, no.

22 Q. How about a recollection of 415 problem with
23 the Suburban ESOP that you acquired, if you follow my
24 question?

25 A. You mean after the closing?

1 Q. What I'm -- let me start that question over.
2 Okay. When you inherited this plan, once the merger
3 was over, did it come to your attention that now Fifth
4 Third has this problem ESOP that excessive
5 contributions were made or allocations were made as of
6 plan year ending June 30, 1997?

7 A. It came to my attention that excess
8 allocations had been made. I don't know what exactly
9 the plan year was or the timing. I don't remember
10 specifics about what plan year it was for.

11 Q. Do you recall that was with regard to the
12 Suburban Federal 401(k) rather than the Suburban
13 ESOP?

14 A. No.

15 Q. It could have been one or the other?

16 A. No. It was with the ESOP.

17 Q. Let's go on to paragraph 2A in Exhibit 22.
18 That paragraph talks about an amendment for the
19 discharge of the ESOP loan as of June 30, 1997 and
20 June 30, 1998. Do you see that?

21 A. Yes.

22 Q. And do you know what amendment would be
23 required to provide for that -- the discharge of the
24 loan?

25 A. I know there's an amendment required. I

1 can't remember the details of what the amendment would
2 say.

3 Q. Why would you need an amendment for the --
4 for the discharge of the loan itself?

5 A. Well, at one -- one thing I know is that you
6 do change the terms of the repayment of the existing
7 loan, so you do need an amendment to apply shares to
8 outstanding principal and interest because you
9 accelerate the loan.

10 That's the only specific amendment provision
11 that I can remember having to do.

12 Q. The next sentence in section 2A states, If
13 the loan is fully discharged as of June 30, 1998, the
14 ESOP shall terminate immediately. Do you see that?

15 A. Yes.

16 Q. Was there -- strike that.

17 This is -- the sentence is starting out with
18 the word if. Was there a possibility it would not
19 terminate as of June 30th, 1998?

20 MR. FISCHER: Objection. I think the if --
21 doesn't it apply to the discharge, or the loan?
22 I'm just reading the sentence. You're asking
23 about a termination question.

24 BY MR. MEYER:

25 Q. What I'm asking you is, it states here, If

1 the loan is fully discharged, the ESOP shall terminate.

2 A. Uh-huh.

3 Q. Did you, as legal counsel for Fifth Third,
4 take into account that this ESOP may not terminate as
5 of June 30, 1998, for whatever reason, the loan isn't
6 discharged or -- for whatever? Did you take that into
7 account?

8 A. Yes.

9 Q. And what provision did you make for that, in
10 the event that it did not terminate as of June 30,
11 1998?

12 A. If I recall correctly, we -- we provided that
13 there would be a request -- well, let me back up a
14 second.

15 2A says, and the agreement was, that if it
16 was -- if we could do it within the limits of Section
17 415, that it would be done right away. That's what
18 this says, if it couldn't, then the agreement was we
19 would apply -- or that the Suburban or its counsel
20 would apply to the IRS for an exception to get that
21 done.

22 Q. To do what? I'm sorry.

23 A. To get an approval from the IRS to go ahead
24 and discharge it, notwithstanding the 415 -- any 415
25 violations.

1 Q. Now, 2A goes on to say that, if the loan is
2 not fully discharged, the ESOP shall be terminated
3 thereafter or as soon as is practicable.

4 A. Uh-huh.

5 Q. Is that your understanding of what the
6 intention of Fifth Third was?

7 A. Yes.

8 Q. By the way, when I say the intention of Fifth
9 Third, it is your understanding of -- once the merger
10 occurred, the Suburban ESOP would be a Fifth Third
11 plan?

12 A. Yes.

13 Q. And Fifth Third's role in that plan would be
14 as both the employer/sponsor and the trustee of the
15 plan, if you know?

16 A. I don't know the answer to that one. I don't
17 recall who -- who played what roles on this plan, to be
18 honest.

19 Q. Now, does this document indicate, in the
20 event that the plan cannot be terminated as of June 30,
21 1998, for whatever reason, then Fifth Third is to look
22 to another document to determine how it's to be
23 terminated?

24 A. Correct.

25 Q. And what other document is that?

1 A. That would be the affiliation agreement.

2 Q. And that would be section 5E-1 of the
3 affiliation agreement?

4 A. Yes.

5 Q. Now, do you have a recollection of whether
6 you played any role in drafting Exhibit 22?

7 A. No, I did not.

8 Q. Did you play any role in reviewing
9 Exhibit 22?

10 A. Yes.

11 Q. And what role did you play?

12 A. I would have received the interpretation from
13 Steve Goodson of what the -- what the provisions of the
14 document say, and would have also made -- helped make
15 decisions about -- about whether it was acceptable to
16 the bank or not.

17 Q. To your knowledge, who prepared Exhibit 22?

18 A. I think it was counsel for the -- for
19 Suburban, Housley Kantarian.

20 Q. Now, do you know if this was a first draft,
21 final draft?

22 A. I don't know whether -- which draft it was,
23 no.

24 Q. Did you or Mr. Goodson have any input into
25 the final draft of the timetable that was adopted?

1 A. Yes. We -- that's -- we would have given
2 comments back, I'm sure. I don't specifically remember
3 in this case whether we did or not. But I assume we
4 did.

5 Q. From your earlier testimony, I take it that
6 you would have some input into whether the
7 contributions that Suburban was making would be allowed
8 by Fifth Third?

9 A. Yes.

10 Q. And who would have the final say in that
11 regard, among -- or the Fifth Third side?

12 A. At that time it would have been either me or
13 Mike Brumm. I'm not sure which one of us made the
14 final decision on this one.

15 Q. Okay.

16 A. He's from the finance department. He was the
17 CFO at the time.

18 Q. Now, would you consider Exhibit 22 to be part
19 of the Suburban ESOP?

20 A. Part of the plan?

21 Q. Yes, sir.

22 A. No.

23 Q. What is it part of?

24 A. It would be part of the affiliation
25 agreement.

1 Q. Do you consider yourself an expert in
2 ESOPs?

3 A. No.

4 Q. Is Mr. Goodson?

5 A. Yes.

6 Q. I asked that because you said earlier that
7 you used the input of Mr. Goodson.

8 A. Yes.

9 Q. So you would consider his expertise to be a
10 bit superior to your own, for whatever reason?

11 A. A lot superior, yes.

12 Q. Let's go to the final paragraph on the front
13 page of Exhibit 22. And that's number 2B. It's
14 referring to a per share value of the company at
15 \$19.99. That's a reference to the value at the time of
16 the Suburban Federal shares, is it not?

17 A. I think so, yes.

18 Q. Well, now that I read it again, there's two
19 possibilities here. Maybe you can tell me which one is
20 your opinion.

21 It says, the per share value of the company
22 as converted to Fifth Third Bancorp shares. Is that
23 the -- before or after the exchange ratio?

24 A. It would have been before the exchange ratio.

25 Q. It goes on to state that, it is projected

1 that annual additions resulting from the discharge of
2 the ESOP loan on June 30, 1998 will be less than
3 25 percent of projected eligible payroll. Do you see
4 that?

5 A. Yes.

6 Q. What is the significance of the 25 percent of
7 projected eligible payroll?

8 A. I don't know.

9 Q. Is that what Section 415 limited as of that
10 time?

11 A. I don't know.

12 Q. It states that the eligible payroll is
13 \$328,137. Do you see that?

14 A. Yes.

15 Q. How would Housley Kantarian determine the
16 eligible payroll?

17 A. I don't know how they determined it.

18 Q. Okay. Would Fifth Third have had documents
19 to either check Housley Kantarian's figure or would
20 they have records to provide that payroll figure to
21 Housley?

22 A. We -- I doubt that we probably would have had
23 records to provide to them. If we were to check it, we
24 would have had to get it from Suburban to check it.

25 Q. So correct me if I'm wrong, but in 2B, what

1 the preparer of this document has done is to look at
2 payroll information from Suburban available as of
3 June 30, 1997. Is that what they did?

4 A. I assume so, yes.

5 Q. And that eligible payroll was \$328,137?

6 A. That's what it says.

7 Q. Now, would Housley know which of the Suburban
8 employees would continue to be hired for the succeeding
9 year through June 30, 1998? Would Housley know that or
10 would Fifth Third know that?

11 A. I don't know whether Housley knew or not.
12 Fifth Third would know.

13 Q. Fifth Third would know?

14 A. They would know who would be -- they would
15 know who was going to continue employment with Fifth
16 Third.

17 Q. Would Fifth Third or Housley be in the better
18 position to know how much the pay rate would be for any
19 employees who were hired from Suburban to Fifth Third
20 after the merger?

21 A. In the better position?

22 Q. Yes, sir.

23 A. Fifth Third.

24 Q. Now, based on paragraph 2B, it appears that
25 the loan can be discharged as of June 30, 1998 for

1 \$286,287. Is that the way you read that?

2 MR. FISCHER: Objection.

3 A. That's the discharge amount?

4 BY MR. MEYER:

5 Q. Well, you tell me what you conclude from
6 reading that paragraph. What is that amount
7 representing?

8 A. I think it's the estimated -- it's the
9 additional income into -- into the ESOP in years
10 following the discharge, because money's no longer
11 needed to pay principal and interest.

12 Q. So from your reading of this, when would you
13 say that loan is going to be discharged?

14 A. Any time before June 30th, of 1998, probably,
15 on or before.

16 Q. So the \$286,287 would be the amount of money
17 needed to both pay off the loan and pay off the shares
18 in this expense account?

19 A. No.

20 MR. FISCHER: Objection.

21 BY MR. MEYER:

22 Q. That's not --

23 A. That's not right.

24 Q. That's not right?

25 A. No.

1 Q. Can you tell me what's wrong with that?

2 A. The \$286,000 is the excess amount that's
3 going to now remain in the plan because you don't have
4 to make current principal and interest payments
5 anymore.

6 Q. Because there's no loan --

7 A. Because there's no loan.

8 Q. -- to pay?

9 A. Because it's been discharged, right.

10 Q. So this really doesn't tell you when the loan
11 is going to be discharged?

12 A. No.

13 Q. Now, having read paragraph 2B, along with the
14 preceding paragraphs, would you feel comfortable that
15 this plan can be terminated as of June 30, 1998, based
16 on the payroll -- Suburban payroll as of June 30,
17 1997?

18 A. I don't know that I can answer that question.
19 I don't know.

20 Q. Do you know whether the intention of this
21 document is to address the issue of whether, consistent
22 with Section 415, this plan can be terminated as of
23 June 30, 1998, based on a eligible payroll of
24 \$328,137?

25 A. Yes, that was the intent.

1 Q. Do you know whether that intention was met as
2 of June 30, 1998?

3 A. No, it was not terminated.

4 Q. Okay. Do you know why that intent wasn't
5 realized as of June 30, 1998?

6 A. Because there was a 415 issue with
7 terminating the plan.

8 Q. What was the 415 issue?

9 A. I'm going to have to explain this in layman's
10 terms, because I really can't give you specific code
11 sections and reasons. But the amounts of money
12 available for distribution would exceed the limits that
13 you could use to allocate to highly compensated
14 employees in the plan.

15 Q. The limit is based upon total payroll,
16 eligible payroll, is it not?

17 A. Correct.

18 Q. So this total eligible payroll figure is
19 important, is it not, to know, in terms of projecting
20 whether or not the 415 limits are going to be met?

21 A. Yes.

22 Q. It is also important to know the annual
23 additions which were projected to total -- or which
24 were estimated to total \$286,287. It's important to
25 consider what will the annual additions be also,

1 right --

2 A. Yes.

3 Q. -- in determining whether the 415 limits are
4 going to be met?

5 A. Yes.

6 Q. Now, what factors would bear on -- we'll take
7 one of these figures at a time. What factors would
8 bear on the eligible payroll to make the \$328,000
9 figure not accurate, to be an overstatement?

10 A. Either the number of people in the plan or
11 the rate pay of the people in the plan -- or the pay
12 rate of the people in the plan.

13 Q. Do you know whether severance pay is included
14 in eligible payroll?

15 A. I do not.

16 Q. Let's talk about the other figure, the annual
17 additions estimated to be \$286,287. What factors would
18 impinge on that number not being correct?

19 A. The -- I guess the earnings of what -- of
20 the -- of the funds in the plan or contributions to the
21 plan.

22 Q. Now, what contributions are you referring
23 to?

24 A. Well, if there were contributions made to the
25 plan, it would increase the amount.

1 Q. By whom? Who would be making contributions
2 to this plan after June 30, 1997?

3 A. I don't remember the time frame of when
4 contributions were made. But it would have to be the
5 plan sponsor.

6 Q. Okay. If the contribution was made between
7 June 30 and the closing date, which I'll ask you to
8 assume is July the 25th --

9 A. Uh-huh.

10 Q. -- that contribution would be made by
11 Suburban, right?

12 A. Correct.

13 Q. Okay. Could Suburban make a contribution
14 without that contribution being approved by Fifth
15 Third?

16 A. Not to my recollection.

17 Q. And then if the contribution were made before
18 June 30, 1998, but after the merger, then that
19 contribution would have had to have been made by Fifth
20 Third, correct?

21 A. Correct.

22 MR. FISCHER: Objection.

23 BY MR. MEYER:

24 Q. Did you review any documents to know whether
25 a contribution was made in plan year ending June 30,

1 1998 by Fifth Third or Suburban?

2 A. No, I don't recall.

3 Q. Let me ask you to look at a document which I
4 think you said you're familiar with. You do review the
5 tax returns, did you say?

6 A. I saw them in some of the files I've got.
7 But I didn't review them in detail, no.

8 Q. Let me ask you to look at the 5500 for plan
9 year ending June 30th, 1998 and ask you whether any
10 contributions were made --

11 MR. FISCHER: Exhibit 18?

12 MR. MEYER: Pat, I didn't write my list. I
13 hope it's 18.

14 MR. FISCHER: I think it's 18.

15 MR. MEYER: You got it, good.

16 MR. FISCHER: All right.

17 A. What do you want me to do, again?

18 BY MR. MEYER:

19 Q. State whether any contributions were made in
20 plan year ending June 30, 1998, according to the tax
21 report filed by Fifth Third.

22 A. It says, 284,434, under Plan Contributions.

23 Q. So that contribution, which was either made
24 or approved by Fifth Third --

25 MR. FISCHER: I'm sorry. The exhibit number

1 with the -- it's 17.

2 MR. MEYER: Thank you. Those kind of things
3 can really foul up the record.

4 MR. FISCHER: They do, this type of case.

5 BY MR. MEYER:

6 Q. Now, is it true that if a contribution in the
7 amount of \$284,434 were made, or contributions were
8 made totaling that amount, in plan year ending June 30,
9 1998, that contribution or those contributions were
10 either made by or approved by Fifth Third?

11 A. No, not necessarily.

12 Q. And under what circumstances could there be
13 an exception?

14 A. Well, if that was the amount of money that
15 was in the plan that previously would have been
16 allocated to the loan that stays in the plan, then I
17 think that shows up as a plan contribution because it
18 doesn't go out anymore.

19 There's no approval required or necessary
20 because it automatically stays in there. There's
21 nothing you can do about taking it out unless the plan
22 terminates.

23 Q. So that could have been contributions made
24 before this particular plan year. Is that what you're
25 saying?

1 A. No. It's contributions resulting from
2 automatic operation of the plan, not from contributions
3 outside the plan into the plan.

4 Q. Okay. You had made that distinction earlier.
5 I should have asked you what you meant. Are you
6 referring to a mere accounting entry?

7 A. Yes.

8 Q. As opposed to a cash contribution?

9 A. The reference I made before was completely
10 different than this. The reference I made before was a
11 contribution from outside the plan to inside the plan
12 and the impact it would have on the financials of the
13 company. In that case it was Suburban when we had that
14 discussion. Okay.

15 This is really talking about money in the
16 plan that otherwise would have been used to repay the
17 loan; but the loan's been repaid, so the money stays in
18 the plan and is treated as a -- contributions back into
19 the plan.

20 But there's no decision made by -- made by
21 the plan sponsor to keep that money in the plan, so --
22 but it shows up as a contribution.

23 Q. So because that shows up as a contribution,
24 that doesn't mean any action was taken by either
25 Suburban or Fifth Third in plan year ending June 30,

1 1998?

2 A. That's correct.

3 Q. What effect does that contribution have, if
4 any, on the annual additions?

5 A. The annual additions?

6 MR. FISCHER: Object to the form.

7 A. I believe it's the same as the annual
8 additions.

9 BY MR. MEYER:

10 Q. So the amount given for plan contributions on
11 the Form 5500 for plan year ending June 3rd, 1998
12 corresponds to the estimate of \$286,287 on Exhibit 22,
13 paragraph 2B?

14 A. Yes. That's my belief.

15 Q. Okay. So the estimate that was made by
16 Housley and reviewed by you on Exhibit 22 was an
17 accurate estimate of the annual additions?

18 A. Pretty close.

19 Q. So if the annual additions were as
20 estimated -- strike that.

21 Let me ask you to look at Exhibit 17
22 again and under 13A. Tell us what the plan assets
23 were valued at the beginning and ending of that plan
24 year.

25 A. 1,174,714.

1 Q. At the beginning?

2 A. At the beginning.

3 Q. And what was it at the end?

4 A. 3,075,869.

5 Q. Would that increase in value affect the
6 ability to terminate this plan as of June 30, 1998
7 consistent with 415 limits?

8 A. Yes, I think so.

9 Q. I take it under 2B --

10 MR. FISCHER: Exhibit 22.

11 BY MR. MEYER:

12 Q. -- of Exhibit 22, the consideration was that
13 there would be another \$287,000 to allocate?

14 A. Yes.

15 Q. Whereas, in reality, there was over
16 \$3 million to allocate in order to terminate the plan,
17 as of June 30, 1998?

18 MR. FISCHER: Objection.

19 MR. MEYER: That's not correct. Strike
20 that.

21 MR. FISCHER: I was going to say.

22 BY MR. MEYER:

23 Q. What we don't know is how many of the shares
24 represented by the \$3 million were allocated as
25 compared to how many were not allocated?

1 MR. FISCHER: Objection.

2 A. Is that a question?

3 BY MR. MEYER:

4 Q. Well, I mean, do you know, by reading the
5 Form 5500, how many of those shares represented by that
6 \$3 million were allocated?

7 A. No. It might be on here, if you want me
8 to read it and see if I can find it -- but I don't
9 know.

10 Q. Well, Mr. Girton tried to look for it the
11 other day and couldn't find it. So we'll go with his
12 answer.

13 A. He's technically better at that than I am.

14 Q. Now, what is your recollection of why the
15 Section 415 limits could not be met? What happened to
16 the plan in that intervening year that had not been
17 forecasted in this timetable to prevent termination of
18 the plan as of June 30, 1998?

19 MR. FISCHER: Objection.

20 A. I have a general recollection that it related
21 to the amount of the -- the amount of the payroll that
22 was allocable to those employees who were participants
23 in the plan and the value of the plan.

24 BY MR. MEYER:

25 Q. Okay. What happened to the amount of the

1 payroll?

2 A. Oh, it decreased.

3 Q. Okay. Would Housley Kantarian have been in
4 any position to know when they did -- when they
5 prepared Exhibit 22 -- would they have been in a
6 position to know that the payroll wasn't going to be
7 \$328,000?

8 A. Yes.

9 Q. And how was that?

10 A. We provided lists of employees and how they
11 would -- whether they would be offered positions with
12 Fifth Third following the acquisition or not.

13 Q. Okay. The -- so you had access to that list,
14 too, did you not?

15 A. Uh-huh.

16 Q. You have to answer yes or no.

17 A. Oh, I'm sorry.

18 (Off the record.)

19 BY MR. MEYER:

20 Q. Did you check that list of employees to be
21 hired by Fifth Third against the numbers being used by
22 Housley in this timetable, which is Exhibit 22?

23 A. Not that I recall.

24 Q. Despite your lack of recollection, if you had
25 looked at that list, what would you have done with

1 employees who were not going to be hired but who would
2 receive severance pay? Would you have included their
3 severance pay or not in this estimate under paragraph
4 2B?

5 MR. FISCHER: Objection to form.

6 A. As I said before --

7 MR. MEYER: Let's take a five-minute break.

8 MR. FISCHER: I think he needs to answer his
9 question.

10 A. As I said before, I don't know what the
11 impact of severance is on the 415 calculation.

12 (A recess was taken from 3:30 to 3:35.)

13 BY MR. MEYER:

14 Q. If we can, look at Exhibit 22 again --

15 A. Okay.

16 Q. -- and paragraph 2C, the second page of
17 Exhibit 22.

18 And it makes a reference in there to Housley
19 making a request to the IRS, but only if it is
20 reasonably projected as agreed by Fifth Third that the
21 ESOP can be terminated on June 3rd, 1998 without
22 violation of the Code Section 415 limits. Do you see
23 that?

24 A. Yes.

25 Q. It goes on to say, and without any

1 unallocated amounts or shares remaining in the ESOP's
2 suspense accounts. Do you see that?

3 A. Yes.

4 Q. Did Housley make such a request for
5 determination?

6 A. I don't know whether they actually made the
7 request or not.

8 Q. Do you know if Fifth Third either reasonably
9 projected or agreed with a reasonable projection that
10 the ESOP could be terminated on June 30, 1998 without
11 violating 415 and without any unallocated shares or
12 amounts remaining in the suspense account?

13 MR. FISCHER: Objection to form.

14 A. Not that I recall.

15 BY MR. MEYER:

16 Q. Do you know why those projections were not
17 made or agreed to by Fifth Third?

18 MR. FISCHER: Objection.

19 A. No.

20 BY MR. MEYER:

21 Q. What is the purpose of a determination letter
22 such as that described in paragraph 2C, if you know?

23 A. It's to ensure that there is not a violation
24 of the IRS requirements, therefore resulting in the
25 plan being disqualified.

1 Q. Is such a determination letter needed in
2 order to terminate the plan?

3 A. Without liability, yes.

4 Q. Do you recall, when did it come to your
5 attention that the Suburban ESOP could not be
6 terminated by June 30, 1998, consistent with Section
7 415?

8 A. I don't remember the exact date.

9 Q. Do you remember the circumstances under which
10 you learned that it could not be?

11 A. Yes. I remember discussing it with
12 Mr. Girton and Mr. Goodson.

13 Q. And what did -- okay. What did Mr. Girton
14 say?

15 MR. FISCHER: Before you answer that, I want
16 to hear the answer to the last question.

17 (The record was read.)

18 MR. FISCHER: To the extent we've taken the
19 position, at least for discovery purposes, that
20 until July 25, 1997 advice from counsel was
21 privileged; from July 26th, 1997 until sometime in
22 1999 or so, when litigation was threatened, that
23 that would be the time when advice from counsel to
24 the plan might be discoverable, privilege might
25 not be waived.

1 If it occurred -- if this advice occurred
2 prior to any alleged litigation or threats of
3 litigation, you can answer that question. But if
4 it's after any threat of litigation or letters
5 making demands, then don't answer that question.

6 MR. MEYER: Well, I'm talking about before
7 June 30, 1998.

8 MR. FISCHER: Okay. Well, I don't know when
9 these demands were made.

10 MR. MEYER: They weren't made before June 30,
11 1998. That's the --

12 MR. FISCHER: Go ahead.

13 THE WITNESS: All right.

14 MR. FISCHER: If you think that's when it
15 was --

16 A. Okay. Now, what was the question?

17 BY MR. MEYER:

18 Q. Okay. Let me put some time limits on it.
19 Before June 30th, 1998, did it come to your attention
20 that you were not going to be able to terminate the
21 plan as of June 30, 1998, consistent with Section 415
22 limits?

23 A. I don't remember the exact time that I became
24 aware. It was prior to any time that any litigation
25 was threatened. But, yes, it came to my attention.

1 Q. Was it before the magic date came and went of
2 June 30, 1998?

3 A. I believe so, but I don't remember the exact
4 date that I had that conversation with Mr. Girton or
5 Mr. Goodson.

6 Q. Okay. What was the nature of your
7 conversation with them?

8 A. The nature of the conversation was that the
9 plan -- that the -- that the intent of the arrangement
10 with -- as contemplated in the affiliation agreement is
11 that we would terminate the plan as soon as possible.

12 However, because of the 415 issues that arose
13 when the calculations for termination were made, that
14 the plan could not be terminated and would have to
15 continue.

16 Q. To your knowledge, who would have made those
17 calculations?

18 A. It probably -- I don't know who made the
19 calculations.

20 Q. Let me ask you, have you ever sought legal
21 advice from Housley Kantarian as the attorney for
22 either Fifth Third or the plan after the merger?

23 A. Not to my recollection.

24 Q. Okay. Do you have any recollection of
25 consulting with any attorney about the Suburban Federal

1 ESOP, other than Steve Goodson or somebody in your
2 department?

3 A. Not to my recollection.

4 Q. Did anybody in your department play any role
5 in the Suburban ESOP before or after the merger, other
6 than yourself?

7 A. In the legal department?

8 Q. Yes.

9 A. No. Prior to this litigation.

10 Q. Now, did someone either in your department
11 or somebody in your legal department or somebody that
12 you were working with try to figure out what occurred
13 so that the -- the termination could not be made on
14 June 30, 1998?

15 A. Not in the legal department.

16 Q. Okay. Did anybody else that you're aware
17 of?

18 A. Mr. Girton and Mr. Goodson.

19 Q. Okay. What did Mr. Girton tell you, if
20 anything, with regard to why the limits could not be
21 met?

22 A. Generally, it related to the amount of -- of
23 money or value in the plan and the associated salary of
24 the participants in the plan.

25 Q. Okay. Would an increase of -- in value of

1 the Fifth Third stock in that plan, would that impinge
2 on these limits, the ability to terminate the plan?

3 A. I think so.

4 Q. Do you know what occurred to the value of
5 Fifth Third stock between June 30, 1997 and June 30,
6 1998?

7 A. Not off the top of my head, no.

8 Q. When you reviewed Exhibit 22, did you take
9 it -- in consideration the value of Fifth Third stock
10 may go up and, therefore, the intention to terminate
11 the plan as of June 30, 1998 may not be able to be
12 met?

13 A. I don't remember considering that
14 specifically, no.

15 Q. Would that be a significant consideration in
16 terms of projecting whether or not the plan could be
17 terminated as of June 30, 1998?

18 A. I'm not that familiar with how it works.

19 Q. Who would be?

20 A. Mr. Goodson, Mr. Girton.

21 Q. Let me ask you to look at -- I didn't bring
22 my list.

23 (Plaintiffs' Exhibit 30 was marked for
24 identification.)

25 MR. FISCHER: Just for the record, we'll make

1 it clear that we've lost track of the counting of
2 the documents, the exhibits, and there will be a
3 gap in the number of exhibits, but we're starting
4 with Exhibit 30 at this point.

5 MR. MEYER: I think we're around 23. We're
6 starting at 30. So there's going to be a small
7 gap.

8 BY MR. MEYER:

9 Q. Let me ask you if you recall seeing
10 Exhibit 30 before; namely, a letter of July 8, 1997
11 from Dan Hogans of Housley Kantarian to Steve Goodson;
12 showing a copy to you?

13 A. I don't specifically recall it.

14 Q. Okay. You had said earlier, I believe, that
15 you had reviewed some correspondence in preparation for
16 your deposition?

17 A. Uh-huh.

18 Q. Is this one of the pieces of correspondence
19 or not?

20 A. I can't answer that for sure. I am not sure.

21 Q. Okay. It makes a reference in here to a
22 revised timetable for termination of Suburban's ESOP.
23 Do you see that?

24 A. Yes.

25 Q. Is that the type of document that we looked

1 at in Exhibit 22?

2 A. Yes.

3 Q. Is this letter, which is Exhibit 30,
4 consistent with your recollection that Mr. Hogans of
5 Housley Kantarian and Mr. Goodson of Keating were
6 exchanging drafts of a timetable to try to come up with
7 a final version?

8 A. Yes.

9 Q. Exhibit 30 refers to suggested -- correction,
10 quote, your suggested changes, meaning changes by Steve
11 Goodson, does it not?

12 A. Yes.

13 Q. Okay. Do you know in particular what changes
14 Steve Goodson made to the timetable for terminating the
15 Suburban ESOP?

16 A. I don't.

17 Q. It states in here -- and this is as of
18 July 8, 1997. It states, Please let us know as soon as
19 possible whether the timetable is acceptable to Fifth
20 Third that Fifth Third has revised so that we made
21 proceed on that basis. Do you see that?

22 A. Yes.

23 Q. Do you know when there was an acceptable
24 finished draft of a timetable?

25 A. I don't know the exact date.

1 Q. If you can assume with me that the merger
2 closed on July the 25th, do you know how soon before
3 that this timetable was actually finalized?

4 A. I don't.

5 Q. Do you know whether Steve Goodson was
6 reviewing the -- the estimated numbers being put into
7 the timetable?

8 A. He was reviewing the timetable. I don't know
9 whether he was reviewing the numbers or not.

10 Q. Okay. Who would be the most logical person
11 to review the numbers in the timetable on behalf of
12 Fifth Third?

13 A. Yeah. It would have started with Steve. I
14 am not sure whether he involved someone in the benefits
15 department or not to check those.

16 Q. Thank you.

17 MR. MEYER: I'll give you 30.

18 BY MR. MEYER:

19 Q. Now, we talked earlier about the ESOP being
20 amended before the merger.

21 A. Uh-huh, yes.

22 Q. Do you recall specifically any amendments
23 that were made before the merger?

24 A. I know amendments were made before the
25 merger. I don't specifically remember what they

1 said.

2 Q. Let's look at Exhibit 31.

3 (Plaintiffs' Exhibit 31 was marked for
4 identification.)

5 BY MR. MEYER:

6 Q. Let me ask you to identify Exhibit 31 for the
7 record.

8 A. It's a letter to Daniel L. Hogans at Housley
9 Kantarian from Stephen Goodson at Keating, Muething &
10 Klekamp, dated July 1st, 1997, regarding the Suburban
11 Bancorporation, Inc. ESOP.

12 Q. Does it show a copy was sent to you?

13 A. Yes.

14 Q. Did you review this correspondence as part of
15 your deposition preparation?

16 A. Yes.

17 Q. Does this letter indicate that Mr. Goodson
18 was reviewing and recommending changes to the proposed
19 1997 ESOP amendment?

20 A. Yes.

21 Q. In fact, what he has attached to his letter
22 is his handwritten changes that are proposed
23 handwritten changes?

24 MR. FISCHER: Objection.

25 BY MR. MEYER:

1 Q. Is that what it says?

2 A. That's what the letter says, yes.

3 Q. Now, did you have any discussion with
4 Mr. Goodson about making changes to this draft of a
5 proposed amendment?

6 A. I don't recall.

7 Q. When you recently reviewed this piece of
8 correspondence, did you review the attachment?

9 A. Yes.

10 Q. It appears that Mr. Goodson circled the
11 second last paragraph on the page that refers to
12 unallocated assets remaining after discharge of the
13 acquisition loan. Do you see that?

14 A. Yes.

15 Q. Okay. Is that a paragraph that -- that you
16 did not want in that amendment or that Mr. Goodson
17 didn't want in that amendment or both of you?

18 A. I don't recall.

19 MR. FISCHER: Objection.

20 BY MR. MEYER:

21 Q. The paragraph goes on to talk about Fifth
22 Third paying out of its own corporate assets, and not
23 plan assets, a certain amount of money or shares.

24 Did you have any objection to Fifth Third
25 making payments out of its own assets?

1 A. I don't recall.

2 Q. Do you remember if Mr. Goodson had an
3 objection to that?

4 A. I don't remember.

5 Q. Do you know what the reference is to
6 unallocated shares remaining in the plan after
7 discharge of the acquisition loan?

8 A. Yes.

9 Q. What does that mean?

10 A. Shares -- shares that are in the plan that
11 aren't allocated to participants but are held in the
12 plan.

13 Q. Okay. And how does that happen, that there's
14 still shares in the plan when the loan has been
15 discharged?

16 A. You mean unallocated?

17 Q. Unallocated, correct, yes. Thank you.

18 A. Because the final -- the -- the final
19 accounts haven't been calculated for all the individual
20 participants in the plan as of that date.

21 Q. Can that occur by the value of the shares
22 increasing over the lifetime of the loan such that
23 share value is greater than the loan balance, the share
24 value in the suspense account is greater than the loan
25 balance?

1 A. Value in the expense account is greater
2 than the loan balance? That can be one reason it
3 occurs.

4 Q. Did that happen in this plan, if you know?

5 A. I don't know.

6 Q. Do you recall whether or not the affiliation
7 agreement included a provision similar to the provision
8 in Exhibit 31, page 2, in the paragraph that was taken
9 out?

10 MR. FISCHER: Objection.

11 A. Which are you --

12 BY MR. MEYER:

13 Q. The one that's --

14 A. Are you talking about the one that begins, To
15 the extent that?

16 Q. Yes, sir.

17 A. Okay. I believe it's in there. I've read it
18 somewhere. I'm not sure it was in the affiliation
19 agreement or not.

20 Q. Do you know why Fifth Third would agree to
21 put it in the affiliation agreement but recommended it
22 not be in the -- in the amendment?

23 A. No.

24 MR. FISCHER: Rick, is this a good stopping
25 point? It's about 3:57.

1 MR. MEYER: If I can find this one other
2 letter, it's very quick.

3 (Off the record.)
4

5 _____
6 PAUL L. REYNOLDS, ESQ.
7

8 - - -

9 DEPOSITION ADJOURNED AT 3:57 P.M.
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C E R T I F I C A T E

STATE OF OHIO :
: SS
COUNTY OF HAMILTON :

I, Brenda Duncan, RDR, CRR, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do certify that before the giving of his deposition, PAUL L. REYNOLDS, ESQ. was by me first duly sworn to depose the truth, the whole truth and nothing but the truth; that the foregoing is the deposition given at said time and place by PAUL L. REYNOLDS, ESQ.; that I am neither a relative of nor employee of any of the parties or their counsel, and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office at Cincinnati, Ohio, this _____ day of _____, 2005.

My commission expires: September 21, 2007. Brenda Duncan, RDR, CRR
Notary Public - State of Ohio

Please make the following corrections to my deposition transcript:

Page	Line Number	Correction Made
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Witness Signature

Date _____